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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 **BOYD BULLOCH; PATRICIA BULLOCH;**  
14 **CELSA ARENAS; JANET B' AIR;**  
15 **ENRIQUETA CASTILLO; GEORGE**  
16 **CASTILLO; LISA FAIRCLOTH; WILLIAM**  
17 **FAIRCLOTH; LINDA GENTRY;**  
18 **WENDELL GENTRY; MAYA LEWIS;**  
19 **ANTHONY LI; CONNIE LI; BRADLEY**  
20 **MAYS; PHU NGUYEN; LEONARD**  
21 **PASCUAL; FRANCES RANDOLPH;**  
22 **MELISSA RANDOLPH; RICHARD**  
23 **SHELER; SYLVIA THOMPSON-SHELER;**  
24 **FLORENCE SWICK; SUSAN VAZ;**  
25 **JEFFREY WELTE; ELENA WOODARD;**  
26 **ROSS WOODARD; TERESA YAMOMO;**

27 Plaintiffs,

28 v.

29 **BANK OF AMERICA CORPORATION,**  
30 **BANK OF AMERICA, NATIONAL**  
31 **ASSOCIATION, BAC HOME LOANS**  
32 **SERVICING, LP; RECONTRUST**  
33 **COMPANY, NA.; FEDERAL HOME LOAN**  
34 **MORTGAGE CORPORATION;**

35 Defendants.

36 **AND ALL RELATED MATTERS**

Case No.: 2:11-cv-00661-JCM -GWF

**FIRST AMENDED CLASS ACTION**  
**COMPLAINT**

1. Deceptive Trade Practices
2. Injunctive Relief
3. Promissory Estoppel

37 COMES NOW, Plaintiff Class Representatives, BOYD BULLOCH, and PATRICIA  
38 BULLOCH, and other named Plaintiffs, CELSA ARENAS, JANET B' AIR, ENRIQUETA  
39 CASTILLO, GEORGE CASTILLO, LISA FAIRCLOTH, WILLIAM FAIRCLOTH, LINDA  
40 GENTRY, WENDELL GENTRY, MAYA LEWIS, ANTHONY LI, CONNIE LI, BRADLEY

1 MAYS, PHU NGUYEN, LEONARD PASCUAL, FRANCES RANDOLPH, MELISSA  
2 RANDOLPH, RICHARD SHELER, SYLVIA THOMPSON-SHELER, FLORENCE SWICK,  
3 SUSAN VAZ, JEFFREY WELTE, ELENA WOODARD, ROSS WOODARD, and TERESA  
4 YAMOMO, by and through their attorneys, the law firm of Callister + Associates, LLC, and  
5 hereby files this Class Action Complaint against the above named Defendants as follows:

6 **PARTIES AND JURISDICTION**

- 7 1. That at all times hereinafter mentioned, Plaintiff BOYD BULLOCH was and still at all  
8 times is a resident of Clark County, Nevada.
- 9 2. That at all times hereinafter mentioned, Plaintiff PATRICIA BULLOCH was and still at  
10 all times is a resident of Clark County, Nevada.
- 11 3. That at all times hereinafter mentioned, Plaintiff CELSA ARENAS was and still at all  
12 times is a resident of Nye County, Nevada.
- 13 4. That at all times hereinafter mentioned, Plaintiff JANET B'AIR was and still at all times  
14 is a resident of Nye County, Nevada.
- 15 5. That at all times hereinafter mentioned, Plaintiff ENRIQUETA CASTILLO was and still  
16 at all times is a resident of Clark County, Nevada.
- 17 6. That at all times hereinafter mentioned, Plaintiff GEORGE CASTILLO was and still at  
18 all times is a resident of Clark County, Nevada.
- 19 7. That at all times hereinafter mentioned, Plaintiff LISA FAIRCLOTH was and still at all  
20 times is a resident of Clark County, Nevada.
- 21 8. That at all times hereinafter mentioned, Plaintiff WILLIAM FAIRCLOTH was and still  
22 at all times is a resident of Clark County, Nevada.
- 23 9. That at all times hereinafter mentioned, Plaintiff LINDA GENTRY was and still at all  
24 times is a resident of Clark County, Nevada.
- 25 10. That at all times hereinafter mentioned, Plaintiff WENDELL GENTRY was and still at  
26 all times is a resident of Clark County, Nevada.
- 27 11. That at all times hereinafter mentioned, Plaintiff MAYA LEWIS was and still at all times  
28

1 is a resident of Clark County, Nevada.

2 12. That at all times hereinafter mentioned, Plaintiff ANTHONY LI was and still at all times  
3 is a resident of Clark County, Nevada.

4 13. That at all times hereinafter mentioned, Plaintiff CONNIE LI was and still at all times is  
5 a resident of Clark County, Nevada.

6 14. That at all times hereinafter mentioned, Plaintiff BRADLEY MAYS was and still at all  
7 times is a resident of Clark County, Nevada.

8 15. That at all times hereinafter mentioned, Plaintiff PHU NGUYEN was and still at all times  
9 is a resident of Clark County, Nevada.

10 16. That at all times hereinafter mentioned, Plaintiff LEONARD PASCUAL was and still at  
11 all times is a resident of Clark County, Nevada.

12 17. That at all times hereinafter mentioned, Plaintiff FRANCES RANDOLPH was and still  
13 at all times is a resident of Clark County, Nevada.

14 18. That at all times hereinafter mentioned, Plaintiff MELISSA RANDOLPH was and still at  
15 all times is a resident of Clark County, Nevada.

16 19. That at all times hereinafter mentioned, Plaintiff RICHARD SHELER was and still at all  
17 times is a resident of Clark County, Nevada.

18 20. That at all times hereinafter mentioned, Plaintiff SYLVIA THOMPSON-SHELER was  
19 and still at all times is a resident of Clark County, Nevada.

20 21. That at all times hereinafter mentioned, Plaintiff FLORENCE SWICK was and still at all  
21 times is a resident of Nye County, Nevada.

22 22. That at all times hereinafter mentioned, Plaintiff SUSAN VAZ was and still at all times  
23 is a resident of Clark County, Nevada.

24 23. That at all times hereinafter mentioned, Plaintiff JEFFREY WELTE was and still at all  
25 times is a resident of Clark County, Nevada.

26 24. That at all times hereinafter mentioned, Plaintiff ELENA WOODARD was and still at all  
27  
28

1 times is a resident of Clark County, Nevada.

2 25. That at all times hereinafter mentioned, Plaintiff ROSS WOODARD was and still at all  
3 times is a resident of Clark County, Nevada.

4 26. That at all times hereinafter mentioned, Plaintiff TERESA YAMOMO was and still at all  
5 times is a resident of Clark County, Nevada.

6 27. Defendant Bank of America Corporation (hereinafter collectively "Bank of America") is  
7 a foreign corporation that is incorporated in Delaware, with its principal place of  
8 business located in Charlotte, North Carolina. At all times material to this Complaint,  
9 Bank of America was doing business in the State of Nevada. Bank of America  
10 Corporation is the parent corporation of Bank of America, National Association.

11 28. Defendant Bank of America, National Association (N.A.) (hereinafter also collectively  
12 "Bank of America") is a national bank with its principal place of business located in  
13 Charlotte, North Carolina. At all times material to this Complaint, Bank of America,  
14 N.A. was doing business in the State of Nevada. Bank of America NA is the parent of  
15 BAC Home Loans Servicing, LP and ReconTrust, N.A.

16 29. Defendant BAC Home Loans Servicing, LP (hereinafter also collectively "Bank of  
17 America") services loans and is a subsidiary of Bank of America with its principal place  
18 of business located in Texas. At all times material to this Complaint, BAC Home  
19 Loans Servicing, LP was doing business in the State of Nevada.

20 30. Defendant ReconTrust Company, NA. (hereinafter also collectively "Bank of America")  
21 is a wholly-owned subsidiary of Bank of America, NA. that services defaulted  
22

23 mortgages. At all times material hereto, ReconTrust's principal place of business was  
24 located in California, and ReconTrust was doing business in the State of Nevada.

25 31. On July 1, 2008, Bank of America completed its purchase of Countrywide Financial  
26 Corporation ("Countrywide"). Since the acquisition, Bank of America has taken over  
27  
28

servicing loans previously serviced by Countrywide. In addition to the Countrywide loans, Bank of America also services loans for other mortgage investors and loans it originated.

32. That upon information and belief and at all times relevant hereto, Defendant FEDERAL HOME LOAN MORTGAGE CORPORATION is a foreign entity not authorized to conduct business in Clark County, Nevada.

### **PROCEDURAL POSTURE**

33. The Class, as defined in the Class Action claim, consists of Class A, Subclass A, and Subclass B.

34. Class A consists of Borrowers in the State of Nevada whose first mortgage loans are: (a) serviced or owned by Bank of America; and (b) the loans are delinquent or in imminent risk of default.

35. Subclass A consists of all persons in Nevada who, while in the middle of negotiating either a short sale or a loan modification with Bank of America, had their home sold at a Trustee's Sale.

36. Subclass B consists of all persons in Nevada who are currently negotiating either a short sale or a loan modification with Bank of America and have had Bank of America proceed with the foreclosure process despite these negotiations.

### **FACTS**

37. Bank of America has made a practice of utilizing deceptive trade practices in their handling of mortgages.

38. Bank of America has done so by:

(A) Misleading consumers by promising to act upon requests for mortgage modifications within a specific period of time, usually one or two months, but stranding consumers without answers for more than six months or even a year;

(B) Misleading consumers with false assurances that their homes would not be

1 foreclosed while their requests for modifications were pending, but sending foreclosure  
2 notices, scheduling auction dates, and even selling consumers' homes while they waited  
3 for decisions;

4 (C) Misrepresenting to consumers that they must be in default on their mortgages to  
5 be eligible for modifications when, in fact, current borrowers are eligible for assistance;

6 (D) Making false promises to consumers that their modifications would be made  
7 permanent if they successfully completed trial modification periods, but then failing to  
8 convert these modifications;

9 (E) Misleading consumers with inaccurate and deceptive reasons for denying their  
10 requests for modifications;

11 (F) Falsely notifying consumers or credit reporting agencies that consumers are in  
12 default when they are not;

13 (G) Misleading consumers with offers of modifications on one set of terms, but then  
14 providing them with agreements on different sets of terms, or misrepresenting that  
15 consumers have been approved for modifications.

16  
17 39. Upon information and belief, Bank of America's misconduct in misrepresenting its  
18 mortgage modification program was confirmed in interviews with consumers, former  
19 employees, and other third parties and through review of relevant documents. Bank of  
20 America's own former employees describe an environment in which the Bank failed to  
21 staff its modification functions with employees with the training, skills, experience,  
22 authority, and information to carry out the Bank's commitments. According to the

23 employees, the modification process was chaotic, understaffed, and not oriented to  
24 customers. Bank employees even described being reprimanded for spending too much  
25 time with individual consumers.

26 40. Because of Bank of America's false promises, many Nevada consumers continued to  
27 make mortgage payments they could not afford, running through their savings, their  
28

1 retirement funds, or their children's education funds. Additionally, due to Bank of  
2 America's misleading assurances, consumers deferred short-sales and passed on other  
3 attempts to mitigate their losses. And they waited anxiously, month after month, calling  
4 Bank of America and submitting their paperwork again and again, not knowing whether  
5 or when they would lose their homes. Whatever the consumers' particular circumstances,  
6 they all suffered the stress and frustration of being misled by Bank of America while  
7 trying to take responsible action to modify their mortgages so they could continue to  
8 make their payments and remain in their homes.

9 41. Mortgage servicers are hired by the owners of mortgages (or "investors," whether  
10 private trusts set up to hold pools of mortgages or government sponsored enterprises,  
11 like Fannie Mae or Freddie Mac, which purchase mortgages) to provide services relating  
12 to the collection of mortgage payments in return for a servicing fee. These services  
13 include negotiations of mortgage modifications of mortgages that are in default, or at  
14 risk of default, as well as the processing of foreclosures. Pooling and servicing  
15 agreements between the investors and servicers set out the fees and terms for servicing  
16 the mortgages, including the manner and circumstances in which the servicer can offer  
17 modifications.

18 42. In the wake of the financial crisis, Bank of America and other major servicers announced  
19 commitments to modify the mortgages of borrowers who are unable (or are unlikely to be  
20 able) to make their monthly mortgage payments. In February 18, 2009, the federal  
21 government supported and extended these efforts by announcing its initiative, Making  
22 Home Affordable, or "MHA" or "HAMP," which provides guidelines and financial  
23 incentives for servicers to modify the mortgages of eligible homeowners. By lowering  
24 the interest rate on the mortgage, reducing principal, forbearing payments, or extending  
25 the terms of home mortgage loans, servicers aim to reach a payment that consumers can  
26 afford. Modifications assist homeowners by allowing them to remain in their homes.  
27 Modifications also serve the investors by preserving payment streams on the mortgages  
28

1 and by reducing the chance of foreclosures) which often result in significant loss of  
2 value.

3 43. Consumers who receive mortgage modifications enter into new loan agreements with  
4 Bank of America. These agreements are entered into for "consideration of the mutual  
5 promises and agreements exchanged and for good and valuable consideration, the  
6 sufficiency of which is hereby acknowledged." As noted above, Bank of America, like  
7 other participating servicers, receive financial payments from the Department of  
8 Treasury for each successful modification. The loan modification agreement reflects the  
9 new terms of the loan, including delinquent payments, interest and other fees that may  
10 be capitalized into the principal balance of the loan. In the loan agreement, the borrower  
11 also agrees, as consideration for the modification, to deliver any documentation needed  
12 to cure a lost or inaccurate note. The borrower also agrees to provide Bank of America  
13 with updated financial information about the borrower that Bank of America would not  
14 otherwise be entitled to receive.

15 44. Over the last three years, Bank of America repeatedly represented that it would offer  
16 mortgage modifications to eligible consumers. For example, in Congressional testimony  
17 on July 16, 2009 before the Senate Committee of Banking, Housing, and Urban Affairs, a  
18 Bank of America executive assured that the Bank: "understands and fully appreciates its  
19 role in helping borrowers through these difficult economic times. We want to ensure  
20 that any borrower who has sufficient income and the intent to maintain homeownership  
21 has the ability to do so using any and all resources we have available. **See, Exhibit "1"**

22 **at 3.** As it has in other contexts, Bank of America also promised unequivocally that:  
23 "customers will not lose their homes to foreclosure while their loans are being considered  
24 for a modification. The Bank places foreclosure sales on hold while it determines a  
25 customer's eligibility for its home retention programs." **See, Exhibit "1" at 6.**

26  
27 45. Upon information and belief, thousands of Nevada consumers have responsibly reached  
28 out to Bank of America to seek either a modification or a short sale.



1 46. Bank of America has and, in many cases, continues to:

- 2 a. Mislead consumers with false promises that it will act on their modifications  
3 within a set period of time, but keeps them waiting for months, and sometimes  
4 more than a year, beyond the promised term;
- 5 b. Mislead consumers with assurances that they will not be foreclosed upon while  
6 the Bank considered their requests for modifications. However Bank of America  
7 has sold the homes of some consumers and sent foreclosure notices to many more  
8 while their requests for modifications were still pending;
- 9 c. Misrepresent to consumers that they must be delinquent on their loans in order to  
10 qualify for assistance, even though neither Bank of America's proprietary  
11 programs nor the federal HAMP program requires that homeowners have missed  
12 payments;
- 13 d. Mislead consumers with false promises that their initial, trial modifications  
14 would be made permanent if and when they made the required three payments on  
15 those plans, but then failed to convert those modifications;
- 16 e. Tell consumers their modifications were denied for reasons that were untrue, such  
17 as that: (i) the owner of the loan refused to allow the modification when Bank of  
18 America had full authority to modify the loan without the investor's approval; (ii)  
19 the Bank had tried unsuccessfully to reach the consumer, even though the  
20 consumer repeatedly called the Bank; (iii) the loan was previously modified  
21 when it was not; (iv) the borrower failed to make trial payments, when they made  
22 all payments; and (v) the borrower was current on his or her loan, when  
23 delinquency is not a condition of a modification;
- 24 f. Falsely notify consumers or credit reporting agencies that consumers are in  
25 default when they are not;
- 26 g. Mislead consumers with offers of modification on one set of terms, and then  
27 provide agreements with materially different terms, or inform consumers that  
28

1           their modifications had been approved, but then tell them that their requests were  
2           denied often months before.

3   47.   Upon information and belief, the Attorney General's Office also has interviewed  
4           numerous former Bank of America call center employees involved in the loan  
5           modification or mitigation process. They describe an environment in which Bank of  
6           America:

7           a.   Threw inexperienced staff into handling mortgage modifications with little  
8           training, direction, or supervision. Said one former employee:

9                   In my experience, call center employees received almost no  
10                  training or direction from Bank of America . . . I and other  
11                  employees frequently complained to our supervisors about our lack  
12                  of training. Before I was transferred to handle calls relating to  
13                  mortgage modifications, I received no special instruction. I only  
14                  remember one meeting on the Making Home Affordable program,  
15                  which lasted only ten to fifteen minutes, where they told us to  
16                  expect more information on the program soon. I did not receive  
17                  any additional information.

18                  From time to time, we received new program guidelines and other  
19                  directives by email. On information and belief, many of the  
20                  people I worked with did not have time to read these emails. The  
21                  direction that we received was often confusing and contradictory.  
22                  An email would say one thing and then a manager would instruct  
23                  us to do something else.

24           Noting that many employees were hired through temporary agencies, another  
25           former employee noted:

26                   These employees don't receive adequate training on how to use all  
27                  of the computer programs and how to make sure documents don't  
28                  get lost. The main point of the training is to teach us how to get  
29                  customers off the phone in less than ten minutes.

30           b.   Frequently misinformed borrowers about the requirements for modifications, the  
31           status of their requests, the likelihood of foreclosure, and even the fax numbers to  
32           which to send their documents. One former employee reported:

33                   When checking a borrower's status I often found that the  
34                  modification request had not been dealt with or was so old that the  
35                  request had become inactive. Yet, I was instructed to inform  
36                  borrowers that they were "active and in status." . . . One time I  
37                  complained to my supervisor, that I felt I was always lying to  
38                  borrowers. Her instructions in response were just to give the  
39                  borrowers their status and to tell them that they are "in the

process," in spite of the fact that the computer showed that nothing was happening.

- c. Regularly lost borrowers' paperwork;
- d. Failed to communicate with borrowers, and deployed a front line staff without the authority or information to help borrowers. Said one employee:

From what I've seen, a borrower can get different explanations from every BOA representative, because our supervisors don't make this information clear in training and nobody at BOA seems to care what we actually say to the borrower, as long as we get them off the phone.

- e. Wrongly foreclosed upon borrowers, or failed to stop foreclosures while borrowers' modification requests were pending. One employee described:

I often fielded calls from borrowers who had received foreclosure notices or been foreclosed upon while they had modification applications pending. Some of the people I spoke with had made more than three months of payments on their trial modifications. I also saw borrowers who were foreclosed upon despite being current on their modification payments.

- f. Reprimanded employees for spending too much time on individual borrowers' calls.

48. The experience of Nevada consumers is confirmed by data published each month by the Department of Treasury, which administers HAMP. Bank of America ranks last in virtually every customer service measure catalogued in the Servicer Performance Report (Making Home Affordable Program, available at <http://www.financialstability.gov/docs/Oct%202010%20Public%20Final.pdf> (Oct. 2010)). According to the October 2010 report, Bank of America has the worst customer service metrics for its call centers and the worst time for resolving third-party complaints (e.g., from housing counselors) to the federal government. Bank of America also ranks at the bottom of servicers in its conversion of trial modifications to permanent modifications, and the number of trial modifications that have languished more than six months.

49. Upon information and belief, Bank of America has mislead consumers and failed to live

up to its commitments to offer modifications as a result of financial incentives that make it more profitable for Bank of America to delay or deny modifications. For instance, Bank of America earns substantial late fees and other default-related fees, which operates as disincentives to modify mortgages so that borrowers can afford to remain current on their obligations. Moreover, servicing fees are too low to encourage Bank of America and other servicers to provide the level of service required to modify mortgages. Finally, the fact that Bank of America (and other servicers) holds second liens on many of these mortgages may explain their reluctance to pursue certain modifications involving principal forgiveness, which would require them to recognize losses on these second liens.

50. Bank of America's deceptive conduct in offering and providing (or failing to offer and provide) loan modifications, as described above, constitutes a deceptive practice under the Nevada Deceptive Trade Practices Act.

51. On or about November 16, 2006, BOYD BULLOCH and PATRICIA BULLOCH, (hereinafter the "Bullochs") purchased the property located at 821 East Lone Mountain Road, North Las Vegas, Nevada 89081; The loan number for this property is 872322295. The Bullochs' loan is currently owned and/or serviced by Bank of America.

52. Throughout 2009, as a result of the economic downturn, the Bullochs began having difficulty making their monthly mortgage payments.

53. On or about February 10, 2010, the Bullochs received a Notice of Default and Election to Sell.

54. Subsequently, the Bullochs received a letter from Bank of America stating that the Bullochs may be available for a loan modification; the Bullochs contacted Bank of America in regards to obtaining a loan modification shortly after this.

55. On or about March 3, 2010, the Bullochs spoke to Bank of America representative Julius Randall, who informed the Bullochs that they needed to fill out loan modification documents and return them to Bank of America.

- 1 56. The Bullochs completed and sent to Bank of America all of the requested documentation.
- 2 57. However, the Bullochs did not receive a loan modification, and instead received a Notice
- 3 of Trustee's Sale on or about August 26, 2010, with a sale date of September 13, 2010.
- 4 58. On or about September 3, 2010, Bank of America was contacted, and a Bank of America
- 5 representative stated that the Bullochs' file was under review, and that a decision should
- 6 be made in 30-45 days.
- 7 59. On or about September 9, 2010, Bank of America was contacted again, and the Bullochs
- 8 were notified that the sale date was postponed to October 13, 2010.
- 9 60. On or about September 15, 2010, Bank of America was contacted again; this time, Bank
- 10 of America representative Jasmine stated that there was no sale date scheduled.
- 11 61. Bank of America was contacted on or about October 1, 2010; Bank of America
- 12 representative Sharon stated that the Bullochs' loan modification was approved pending
- 13 investor approval, and that the sale date was postponed to November 15, 2010.
- 14 62. On or about November 5, 2010, the Bullochs were notified by Bank of America that the
- 15 sale date was once again postponed to December 15, 2010; the Bank of America
- 16 representative also stated that the Bullochs' file was still in review.
- 17 63. On or about November 18, 2010, Bank of America again requested that the Bullochs
- 18 provide them with the required loan modification documents; These documents were
- 19 provided to Bank of America on or about November 30, 2010.
- 20 64. In early December 2010, the Bullochs were notified that no sale date was scheduled.
- 21 65. Bank of America representative Prentice informed the Bullochs, on or about December
- 22 17, 2010, that their documentation was available for review, and that no further
- 23 documentation was needed.
- 24
- 25 66. However, on or about December 28, 2010, Bank of America was contacted and the
- 26 Bullochs were told that their loan modification request was cancelled, as the requested
- 27 loan modification documents were not received; furthermore, a sale date was set for
- 28 February 17, 2011.

1 67. On this same day, December 28, 2010, the Bullochs sent all of the required  
2 documentation to Bank of America again.

3 68. On or about January 11, 2011, Bank of America representative Prentice stated that the  
4 Bullochs' documentation was received again, however, the documents were not being  
5 reviewed yet.

6 69. Although the Bullochs were in the midst of negotiating with Bank of America in regards  
7 to a loan modification, Bank of America continued moving forward with the foreclosure  
8 process, and set another sale date for March 21, 2011.

9 70. Bank of America was contacted yet again on or about March 1, 2011; Bank of America  
10 representative LaTonya informed the Bullochs that their file was in review, and that they  
11 needed to resend the requested loan modification documents.

12 71. The Bullochs provided Bank of America with all of the requested loan modification  
13 documents on or about March 4, 2011.

14 72. On or about March 15, 2011, the Bullochs were notified by Bank of America  
15 representative Joe that a sale date has been set for April 26, 2011.

16 73. Bank of America has proceeded with the foreclosure process on the Bullochs home, even  
17 though Bank of America is in active negotiations with the Bullochs regarding obtaining a  
18 loan modification.

19 74. On or about March 30, 2005, CELSA ARENAS (hereinafter "Arenas") purchased the  
20 property located at 1900 Hassett Drive, Las Vegas, Nevada 89104; The loan number for  
21 this property is 22180393. Arenas's loan is currently owned and/or serviced by Bank of  
22 America.

23  
24 75. In or about January 2009, Arenas's monthly mortgage payments were raised; as a result  
25 of the increase in what was to be paid each month, along with Arenas experiences  
26 financial difficulties, Arenas began having problems making her monthly mortgage  
27 payments.

28 76. Arenas then contacted Bank of America in regards to obtaining a loan modification.

- 1 77. Arenas spoke with Bank of America representative Eric Chavez, who provided Arenas  
2 with all of the required loan modification documents.
- 3 78. Arenas completed all of the required loan modification documents, and provided them to  
4 Bank of America as requested.
- 5 79. Subsequently, Arenas received a letter from Bank of America stating that she did not  
6 qualify for a loan modification.
- 7 80. However, in or about October 2009, Arenas was contacted by Bank of America and was  
8 told that she did qualify for a loan modification; Arenas received a loan modification trial  
9 period plan, which required Arenas to make three consecutive reduced monthly  
10 payments, due on November 1, 2009, December 1, 2009, and January 1, 2010.
- 11 81. Subsequently, Arenas returned all of the required documentation for the trial period plan  
12 and made all of her trial period payments.
- 13 82. After not receiving a permanent modification, Arenas contacted Bank of America in this  
14 regard.
- 15 83. Eventually, Arenas got in contact with Bank of America representative Eddie, who told  
16 Arenas that her file was now assigned to Bank of America representative Deborah;  
17 Arenas attempted to contact Deborah on multiple occasions, however, was unable to get  
18 in contact with her.
- 19 84. Furthermore, on or about November 24, 2010, Arenas received a Notice of Default and  
20 Election to Sell.
- 21 85. After receiving the Notice of Default, Arenas elected to participate in the State of Nevada  
22 Foreclosure Mediation Program.
- 23 86. Arenas's Foreclosure Mediation took place on or about March 17, 2011, however, the  
24 parties were unable to come to a resolution; furthermore, Bank of America failed to bring  
25 all of the required documentation to the mediation.
- 26 87. Despite Arenas being in the midst of negotiations with Bank of America in regards to  
27 obtaining a loan modification, Bank of America has proceeded with the foreclosure  
28



process.

88. On or about December 2, 2007, JANET B' AIR (hereinafter "B'air") and FLORENCE SWICK (hereinafter "Swick") purchased the property located at 331 Kenny Avenue, Pahrump, Nevada 89060; The loan number for this property is 174227793. B'air's and Swick's loan is currently owned and/or serviced by Bank of America.
89. Toward the end of 2009, as a result of the economic downturn, and Swick moving out of the home, B'air began having difficulty keeping up with the monthly mortgage payment.
90. Subsequently, B'air began contacting Bank of America in regards to obtaining a loan modification; Bank of America requested that B'air provide them with personal financials and other loan modification documents/forms.
91. In or about February 2010, B'air provided Bank of America with all of the requested loan modification documents.
92. On or about March 22, 2010, B'air received a letter from Bank of America stating that, based upon her financials, no workout options were available.
93. However, one month later, on or about April 22, 2010, B'air received another letter from Bank of America; this time, the letter stated that B'air may be eligible for the HAMP program.
94. In response to this, B'air once again sent all of the requested loan modification documents to Bank of America.
95. Although B'air's file was being reviewed for a loan modification, and B'air was currently negotiating with Bank of America in regards to obtaining a loan modification, B'air received a Notice of Default and Election to Sell on or about May 3, 2010.
96. Furthermore, on or about May 26, 2010, B'air received another letter from Bank of America; The letter stated that Bank of America was still missing some of the documentation.
97. On or about June 4, 2010, B'air once again provided Bank of America with all of the requested loan modification documents.



1 98. On or about September 1, 2010, B'air attended her scheduled home loan mediation, as  
2 required under Nevada Assembly Bill 149.

3 99. At the mediation, Bank of America failed to bring all of the required documentation.

4 100. However, the mediator issued a Mediator Statement, stating that the parties had come to  
5 a resolution; the parties agreed that a short sale could be pursued and that B'air could  
6 provide Bank of America with updated loan modification documents.

7 101. On or about December 15, 2010, B'air was notified by Bank of America that her file was  
8 still under review.

9 102. Despite being in the midst of negotiations with Bank of America in regards to obtaining a  
10 loan modification or, in the alternative, pursuing a short sale, Bank of America proceeded  
11 with the foreclosure process.

12 103. On or about August 15, 2006, GEORGE CASTILLO and ENRIQUETA CASTILLO,  
13 (hereinafter the "Castillos") purchased the property located at 5990 McLeod Drive, Las  
14 Vegas, Nevada 89120; The loan number for this property is 131305019. The Castillos'  
15 loan is currently owned and/or serviced by Bank of America.

16 104. In 2009, as a result of the economic downturn, and George Castillo being diagnosed with  
17 Pulmonary Fibrosis, the Castillos began having difficulty making their monthly mortgage  
18 payment.

19 105. Subsequently, the Castillos began contacting Bank of America in regards to obtaining a  
20 loan modification.

21 106. On or about August 4, 2010, Bank of America representative Raul notified the Castillos  
22 that their file has been assigned to a negotiator and that the Castillos file is under review.

23 107. Despite the Castillos being in the midst of negotiations with Bank of America in regards  
24 to obtaining a loan modification, Bank of America has continued with the foreclosure  
25 process.

26 108. On or about August 25, 2006, LISA FAIRCLOTH and WILLIAM FAIRCLOTH,  
27 (hereinafter the "Faircloths") purchased the property located at 7540 Florine Ave, Las  
28

1 Vegas, Nevada 89129; The loan number for this property is 141219497. The Faircloths'  
2 loan is currently owned and/or serviced by Bank of America.

3 109. In or around June 2008, Lisa Faircloth was let go from her job due to the company going  
4 out of business; Lisa Faircloth had been the primary source of income for her family.

5 110. Since then, Lisa Faircloth has been unable to find steady work or a steady income.

6 111. The Faircloths could not afford to pay their mortgage any longer.

7 112. The Faircloths tried to make the payments for a couple of months and eventually fell  
8 behind.

9 113. The Faircloths first called to discuss loan modification in or about June 2008 and were  
10 told that since they were current on their payments, there was nothing that could be done  
11 to help them.

12 114. Starting in April 2009, Bank of America was called on a regular basis in order to obtain a  
13 loan modification.

14 115. All Bank of America would tell the Faircloths was that "the case is in review."

15 116. The Faircloths were finally scheduled for a mediation on February 1, 2010, almost a year  
16 after they contacted Bank of America.

17 117. At the mediation, the Faircloths were told that they qualified for HAMP, but that their  
18 loan could not be extended because in-house guidelines overrode the federal law.

19 118. Nothing was accomplished at the Faircloths' mediation with Bank of America.

20 119. Bank of America continued to negotiate with the Faircloths in an attempt to obtain a loan  
21 modification.

22 120. Throughout 2010, at the request of Bank of America, the Faircloths sent the required loan  
23 modification documentation to Bank of America multiple times.

24 121. However, Bank of America repeatedly stated that documentation was not received, and  
25 that it would need to be re-sent.

26 122. On or about January 14, 2011, Bank of America was contacted regarding the Faircloths'  
27 home, and Bank of America once again requested more documentation, which was sent  
28

1 via email.

2 123. On January 24, 2011, Bank of America stated that all of the required documentation was  
3 received, and that the file was in review.

4 124. Despite being in the middle of negotiations with Bank of America regarding a loan  
5 modification, Bank of America went ahead with the foreclosure process on the  
6 Faircloths' home.

7 125. On or about October 26, 2006, WENDELL GENTRY and LINDA GENTRY (hereinafter  
8 the "Gentrys") purchased the property located at 5306 Hickam Ave., Las Vegas, Nevada  
9 89130; The loan number for this property is 870598516. The Gentrys' loan is currently  
10 owned and/or serviced by Bank of America.

11 126. Throughout 2009, as a result of the economic downturn and Affiant suffering two heart-  
12 attacks, the Gentrys began having difficulty making their monthly mortgage payment.

13 127. Shortly thereafter, the Gentrys began contacting Bank of America in regards to obtaining  
14 a loan modification; however, Bank of America was unwilling to help the Gentrys.

15 128. On or about May 11, 2010, the Gentrys received a Notice of Default and Election to Sell.

16 129. Subsequently, Bank of America requested that the Gentrys provide them with loan  
17 modification documents and financial information; the Gentrys provided all of the  
18 requested documentation to Bank of America each time it was requested.

19 130. The Gentrys called Bank of America every few weeks to determine the status of their  
20 file; Bank of America informed them every time that they were still in foreclosure, but no  
21 sale date was set.  
22

23 131. After receiving the Notice of Default, the Gentrys elected to participate in the State of  
24 Nevada Foreclosure Mediation Program.

25 132. In or about September 2010, the Gentrys provided all of the required documentation to  
26 both the assigned mediator and the trustee; it was confirmed by both that all of the  
27 documentation was received.

28 133. At the foreclosure mediation, the parties came to an agreement, and the Gentrys were

1 assured that they would not lose their home; as part of the agreement, the Gentrys were to  
2 provide more documentation to Bank of America.

3 134. The Gentrys provided the requested documentation to Bank of America on or about  
4 December 7, 2010.

5 135. On or about January 2, 2011, the Gentrys contacted Bank of America and were told that  
6 their file was still in review, and that no further documentation was required.

7 136. In or about April 2011, the Gentrys received a letter from Bank of America stating that  
8 their modification was denied, as the requested documentation was not received.

9 137. On or about April 14, 2011, Affiant and his once again sent all of the requested  
10 documentation to Bank of America.

11 138. Despite the Gentrys being in the midst of negotiations with Bank of America in regards  
12 to obtaining a loan modification, Bank of America proceeded with the foreclosure  
13 process.

14 139. Furthermore, the Gentrys were told on numerous occasions that all of the documentation  
15 was received, only to be told weeks later, the complete opposite.

16 140. On or about May 15, 1998, MAYA LEWIS (hereinafter "Lewis") purchased the property  
17 located at 9909 Garamound Avenue, Las Vegas, Nevada 89117; The loan number for this  
18 property is 005741052. Lewis's loan is currently owned and/or serviced by Bank of  
19 America.

20 141. Beginning in 2007, and throughout the next few years, Lewis experienced financial  
21 difficulties, and as a result, began having problems making her monthly mortgage  
22 payment.

23 142. Subsequently, Lewis contacted Bank of America in regards to obtaining a loan  
24 modification.

25 143. Lewis provided Bank of America with all of the required loan modification documents,  
26 however, Bank of America would not give her a loan modification.

27 144. On or about September 22, 2009, Lewis received a Notice of Default and Election to Sell.  
28

1 145. After receiving the Notice of Default, Lewis elected to participate in the State of Nevada  
2 Foreclosure Mediation Program.

3 146. On or about December 8, 2010, Lewis attended the foreclosure mediation; At the  
4 mediation, the parties agreed to a loan modification, provided Lewis would provide Bank  
5 of America with proof of an Intent to Reaffirm the mortgage debt and proof of income.

6 147. Lewis provided Bank of America with all of the requested additional  
7 documentation/proof.

8 148. However, Bank of America has still refused to approve Lewis for a loan modification.

9 149. Despite Lewis being in the midst of negotiations with Bank of America in regards to  
10 obtaining a loan modification, Bank of America has proceeded with the foreclosure  
11 process.

12 150. On or about September 18, 2006, ANTHONY LI and CONNIE LI, (hereinafter the  
13 "Lis") purchased the property located at 92 Laying Up Court, Las Vegas, Nevada 89148;  
14 The loan number for this property is 131830540. The Lis' loan is currently owned and/or  
15 serviced by Bank of America.

16 151. As a result of the economic downturn, the Lis began having problems keeping up with  
17 their monthly mortgage payment.

18 152. In the beginning of 2009, the Lis contacted Bank of America in an attempt to get a loan  
19 modification, however, Bank of America told the Lis that they must first be in default  
20 before Bank of America could help them; The Lis followed Bank of America's advice,  
21 and fell behind on their payments.

22 153. Subsequently, the Lis sent all of the required documentation requested by Bank of  
23 America; however, Bank of America has been unwilling to negotiate or approve the Lis  
24 for a modification.

25 154. Bank of America has continually requested repeat documentation, which the Lis have  
26 provided to them at every request.

27 155. In or about September 2010, the Lis received a Notice of Default and Election to Sell.  
28

- 1 156. A mediation was held on January 20, 2011, however, no agreement was reached.
- 2 157. Subsequently, Bank of America again began negotiating with the Lis in regards to a loan  
3 modification.
- 4 158. On or about April 6, 2011, the Lis once again re-sent all of the required documentation to  
5 Bank of America in an attempt to get a loan modification.
- 6 159. Despite being in the midst of negotiations with Bank of America, Bank of America has  
7 proceeded with the foreclosure process, setting a sale date for April 26, 2011.
- 8 160. On or about August 2, 2007, BRADLEY MAYS, (hereinafter "Mays") purchased the  
9 property located at 2521 Illumination Bay Place, Laughlin, Nevada 89029; The loan  
10 number for this property is 172800226. Mays's loan is currently owned and/or serviced  
11 by Bank of America.
- 12 161. By mid-2008, as a result of the economic downturn, Mays began having difficulties  
13 making his monthly mortgage payment.
- 14 162. In the beginning of 2009, Mays began negotiating a loan modification with Bank of  
15 America.
- 16 163. In August of 2009, Bank of America informed Mays that he qualifies for a new interest  
17 rate and payment; Bank of America tells Mays to give them 90 days for a new payment  
18 book to issue.
- 19 164. Between August of 2009 and October of 2009, Mays called Bank of America over ten  
20 times to confirm the loan modification; Bank of America kept telling Mays that  
21 everything was okay and the loan modification was being processed.
- 22 165. On or about December 23, 2009, Mays received a Notice of Default and Election to Sell.
- 23 166. Mays continued to contact Bank of America in regards to his loan modification, but did  
24 not receive any answers.
- 25 167. Mays again attempted to obtain a loan modification from Bank of America.
- 26 168. On or about July 8, 2010, Mays received a letter from Bank of America stating that Mays  
27 is not being considered for a HAMP loan modification because he previously rejected an  
28

- 1 already offered modification.
- 2 169. However, on or about September 30, 2010, Mays received yet another letter from Bank  
3 of America stating that he was approved for a loan modification, and that Mays must  
4 return the required documentation by October 14, 2010; Mays returned the required  
5 documentation by October 14, 2010.
- 6 170. On or about November 19, 2010, Mays received a letter from Bank of America stating  
7 that Bank of America had not received the required documentation, and that as a result,  
8 Mays would not be getting a loan modification.
- 9 171. On or about December 31, 2010, Mays received a letter from Bank of America stating  
10 that Bank of America has received Mays's last installment due under a Special  
11 Forbearance Plan, and that Mays's account is now current.
- 12 172. However, *that same day*, December 31, 2010, Mays received a Notice of Intent to  
13 Accelerate, with a reinstatement amount of \$50,340.65.
- 14 173. On or about February 22, 2011, Mays received another Notice of Default and Election to  
15 Sell.
- 16 174. Despite being in the middle of negotiations with Bank of America regarding a loan  
17 modification, Bank of America is proceeding with the foreclosure process.
- 18 175. On or about December 8, 2006, PHU NGUYEN, (hereinafter "Nguyen") purchased the  
19 property located at 9838 Delta Lake Court, Las Vegas, Nevada 89148; The loan number  
20 for this property is 153536594. Nguyen's loan is currently owned and/or serviced by  
21 Bank of America.
- 22 176. As a result of the economic downturn, Nguyen began having problems making his  
23 monthly mortgage payment.
- 24 177. In or about June 2008, Nguyen retained a third party modification company to help him  
25 obtain a loan modification.
- 26 178. Upon information and belief, Nguyen, and the company he had retained to help him get a  
27 loan modification, were told by Bank of America on numerous occasions that his file was  
28

1 in review, and he would be hearing from them within 45 days.

2 179. However, on or about September 25, 2009, Nguyen's home was sold at a trustee's sale to  
3 Defendant Federal Home Loan Mortgage Corporation.

4 180. Federal Home Loan Mortgage Corporation is a necessary and indispensable party  
5 because they unfortunately purchased Nguyen's property which was wrongfully  
6 foreclosed upon by Bank of America.

7 181. Nguyen contacted Bank of America numerous times to find out why his home was sold  
8 while he was in negotiations on a loan modification, but received no answers from Bank  
9 of America.

10 182. However, even after his home was already sold at a trustee's sale, Nguyen received a  
11 letter on or about December 7, 2009 from Bank of America stating that he would not  
12 qualify for a loan modification as a result of his financial situation.

13 183. Despite being in the middle of negotiations with Bank of America regarding a loan  
14 modification, Nguyen received conflicting information regarding the status of his  
15 modification, and had his home sold at a trustee's sale.

16 184. On or about December 9, 2004, LEONARD PASCUAL, (hereinafter "Pascual")  
17 purchased the property located at 4171 Mita Way, Las Vegas, Nevada 89141; The loan  
18 number for this property is 69949408. Pascual's loan is currently owned and/or serviced  
19 by Bank of America.

20  
21 185. As a result of the economic downturn, Pascual began having problems keeping up with  
22 his monthly mortgage payment.

23 186. On or about February 6, 2008, Pascual received a Notice of Default and Election to Sell.

24 187. Subsequently, Pascual began contacting his lender in regards to obtaining a loan  
25 modification.

26 188. On or about May 1, 2008, Pascual received a Notice of Trustee's Sale.

27 189. Pascual continued negotiating with Bank of America in regards to obtaining a loan  
28 modification.



- 1 190. In early 2009, Pascual received a loan modification trial period plan, which required  
2 Pascual to make three consecutive reduced monthly payments, due on August 16, 2009,  
3 October 1, 2009, and November 1, 2009.
- 4 191. On or about August 13, 2009, Pascual contacted Bank of America and spoke to Bank of  
5 America representative Lionel, who gave Pascual a grace period in which to make the  
6 first trial payment.
- 7 192. Subsequently, Pascual made all of this trial period payments.
- 8 193. After not receiving a permanent modification, Pascual contacted Bank of America in this  
9 regard.
- 10 194. Pascual received a letter from Bank of America dated January 14, 2010, stating that they  
11 were currently reviewing his file for a loan modification.
- 12 195. However, on or about January 23, 2010, Pascual received a letter from Bank of America  
13 stating that Bank of America had received four out of the five trial period payments, and  
14 that the last trial period payment would be due on or before January 31, 2010; Pascual  
15 was confused as to this letter, as the trial period plan required only three payments.
- 16 196. Then, on or about January 29, 2010, Pascual received a letter from Bank of America  
17 stating that they did not have all of the required loan modification documents, and that  
18 Pascual would have to provide them to Bank of America immediately; Pascual did so.
- 19 197. However, Pascual never received a loan modification.
- 20 198. Whenever Pascual would contact Bank of America in regards to a loan modification, he  
21 was consistently told that his file was in review.
- 22 199. On or about December 10, 2010 Pascual received a letter from Bank of America stating  
23 that a loan modification on his mortgage isn't an option, and that he may be eligible for a  
24 short sale.
- 25 200. Subsequently, Bank of America once again requested that Pascual provide them with  
26 financial documentation and forms; Pascual provided Bank of America with these  
27 documents and forms on or about December 27, 2010.
- 28

1 201. In the beginning of 2011, Bank of America began negotiating with Pascual once again  
2 regarding a loan modification; Pascual was required to provide more documentation to  
3 Bank of America, which he did.

4 202. Despite Pascual being in the midst of negotiations with Bank of America in regards to  
5 obtaining either a loan modification or a short sale, Bank of America proceeded with the  
6 foreclosure process on Pascual's home.

7 203. On or about May 19, 2006, MELISSA RANDOLPH and FRANCES RANDOLPH,  
8 (hereinafter the "Randolphins") purchased the property located at 4209 Agosta Luna Place,  
9 Las Vegas, Nevada 89135; The loan number for this property is 128111836. The  
10 Randolphins' loan is currently owned and/or serviced by Bank of America.

11 204. As a result of the economic downturn, the Randolphins began having problems keeping up  
12 with their monthly mortgage payment.

13 205. In or around November 2009, the Randolphins contacted Bank of America regarding a loan  
14 modification; Bank of America told the Randolphins that they must first be in default  
15 before they could be considered for a loan modification.

16 206. At the direction of Bank of America, the Randolphins stopped paying their monthly  
17 mortgage payment.

18 207. Bank of America requested loan modification documents from the Randolphins, which the  
19 Randolphins sent to Bank of America.

20 208. In or about March 2010, the Randolphins received a Notice of Default and Election to Sell.

21 209. The Randolphins attended a mediation with Bank of America on April 16, 2010, and the  
22 parties came to an agreement.

23 210. At the mediation, it was agreed that the Randolphins would supply Bank of America with  
24 an updated T4506 schedule, and that Bank of America would obtain a final approval for a  
25 HAMP loan modification.

26 211. Although the Randolphins complied with the agreement by sending Bank of America the  
27 updated T4506 schedule, the Randolphins have yet to receive either a final approval or a  
28

1 denial.

2 212. Despite being in the midst of negotiations with Bank of America regarding a loan  
3 modification, Bank of America has proceeded with the foreclosure process.

4 213. On or about June 11, 2007, RICHARD SHELER and SYLVIA THOMPSON-  
5 SHELER(hereinafter the "Shelers") purchased the property located at 3601 Cottage  
6 Wood Street, Laughlin, Nevada 89029; The loan number for this property is 162959053.  
7 The Shelers' loan is currently owned and/or serviced by Bank of America.

8 214. In the beginning of 2009, as a result of the economic downturn, the Shelers began having  
9 difficulty making their monthly mortgage payment.

10 215. Shortly thereafter, the Shelers began contacting Bank of America in regards to obtaining  
11 a loan modification.

12 216. The Shelers provided Bank of America with all of the requested financial and loan  
13 modification documents.

14 217. On or about July 22, 2009, the Shelers once again sent financial and loan modification  
15 documents to Bank of America.

16 218. On or about July 24, 2009, the Shelers received a letter from Bank of America stating  
17 that based upon a review of their file, the Shelers may qualify for a HAMP loan  
18 modification.

19 219. Subsequently, the Shelers were approved for a HAMP Trial Period Plan.

20 220. On or about August 17, 2009, the Shelers provided Bank of America with all of the  
21 required loan modification documents, including the Trial Plan documents.

22 221. Accordingly, the Shelers were to make three reduced payments, on September 1, 2009,  
23 October 1, 2009, and November 1, 2009, in order to qualify for a permanent  
24 modification.

25 222. On or about September 1, 2009, the Shelers were contacted by Bank of America, who  
26 requested that the Shelers provide more financial documentation to Bank of America; the  
27 Shelers provided the requested documentation that same day.  
28

223. On or about September 15, 2009, the Shelters were once again contacted by Bank of America, requesting additional documents; once again, the Shelters complied with Bank of America's request and provided the documents.
224. On or about September 28, 2009, the Shelters were told by Bank of America that they would need to re-send the same documentation that they had sent on September 15, 2009; no reason was given for needing this documentation again, however, the Shelters complied anyways and provided the requested documentation that same day.
225. On or about February 27, 2010, the Shelters received a letter from Bank of America, stating that all of their Trial Payments and documents had been received, and that the Shelters were now eligible for a permanent modification; Bank of America requested that the Shelters send in the final documentation, including the loan modification agreement, by March 9, 2010.
226. The Shelters provided Bank of America with all of the requested documentation on or before March 9, 2010.
227. However, after the Shelters completed everything that was asked of them by Bank of America, Bank of America offered them a permanent loan modification which did not lower their monthly payment but instead raised their monthly payment.
228. For over eight months, Bank of America representatives continually misrepresented the modification program, and promised lower payments; the Shelters never received what was promised to them.
229. The Shelters were then informed by Bank of America that they would not be able to apply for another loan modification for one year; however, Bank of America then began negotiating with the Shelters in regards to a special forbearance plan.
230. On or about November 30, 2010, the Shelters received a Notice of Default and Election to Sell.
231. Subsequently, the Shelters elected to participate in the State of Nevada Foreclosure Mediation Program.

1 232. On or about April 4, 2011, the Shelters attended the foreclosure mediation, however the  
2 parties were unable to come to a resolution; the mediator did, however, state that the  
3 Shelters could provide updated financials to Bank of America after the mediation.

4 233. Despite being in the midst of negotiations with Bank of America in regards to obtaining a  
5 loan modification, Bank of America proceeded with the foreclosure process.

6 234. On or about March 19, 2009, SUSAN VAZ, (hereinafter "Vaz") purchased the property  
7 located at 3239 Duneville Street, Las Vegas, Nevada 89146; The loan number for this  
8 property is 197354777. Vaz's loan is currently owned and/or serviced by Bank of  
9 America.

10 235. Approximately three months after Vaz purchased her home, the company she worked for  
11 filed bankruptcy and as a result, Vaz lost her job.

12 236. Losing her job and having no income at the time caused Vaz to experience extreme  
13 financial difficulties.

14 237. After losing her job, Vaz immediately contacted Bank of America on or about June 23,  
15 2009 to inquire into obtaining a loan modification; a representative of Bank of America  
16 informed Vaz that they could not help her, as she needed to be several months behind on  
17 her payments before she would qualify for any loan modification programs.

18 238. Vaz then stated that she would likely be behind on her payments very soon, as she was  
19 only going to be receiving weekly unemployment; the Bank of America representative  
20 informed Vaz that she would still not qualify for any programs, as unemployment was  
21 still considered an "income," and that she definitely needed to be behind on her  
22 payments.

23  
24 239. In or about July 2009, Vaz contacted Bank of America again, informing them that she  
25 had obtained another job, and again inquiring into whether she could get a loan  
26 modification; the Bank of America representative again told Vaz that they could not help  
27 her, as she was still current on her monthly mortgage payments.

28 240. In or about December 2009, Vaz could no longer make her monthly mortgage payments.

- 1 241. In or about January 2010, Bank of America contacted Vaz in regards to her missed  
2 payments; at that point, Vaz again requested assistance in obtaining a loan modification.
- 3 242. In or about February 2010, Vaz finally received a packet of documents from Bank of  
4 America in regards to a loan modification, which Vaz was to fill out and return.
- 5 243. Vaz completed all of the forms, and returned everything Bank of America was  
6 requesting.
- 7 244. However, in or about April 2010, Vaz received a letter from Bank of America stating that  
8 she did not qualify for a loan modification because she did not return all of the required  
9 documentation.
- 10 245. On or about May 5, 2010, Vaz received a Notice of Default and Election to Sell.
- 11 246. At this point, Vaz was informed that Bank of America representative William Rinehart  
12 was assigned to her file; Vaz attempted to call Mr. Rinehart many times, however, Vaz  
13 never received a return call.
- 14 247. Vaz was then contacted by another Bank of America representative, who requested that  
15 Vaz once again complete and return all of the loan modification documents and forms;  
16 Vaz complied and sent Bank of America all of the requested documentation.
- 17 248. Additionally, Vaz sent in the required documentation and fees to participate in the State  
18 of Nevada Foreclosure Mediation Program.
- 19 249. On or about May 19, 2010, Vaz spoke with Bank of America representative Georgette,  
20 who told Vaz that she should call in every month to check on the status of her loan  
21 modification.
- 22 250. On or about June 3, 2010, Vaz received a letter from Bank of America stating that her  
23 home was about to be foreclosed upon.
- 24 251. However, on or about June 7, 2010, Vaz contacted Bank of America and was told that her  
25 file was still under review.
- 26 252. On or about June 15, 2010, Vaz again contacted Bank of America; Again, Vaz was told  
27 that her file was under review.
- 28

1 253. On or about June 22, 2010, Vaz spoke with Bank of America representative Barbara, who  
2 requested that Vaz *again* provide Bank of America with the loan modification documents  
3 and forms; once again, Vaz filled out and sent Bank of America all of the requested  
4 documentation.

5 254. On or about July 9, 2010, Vaz spoke with Bank of America representative Robin, who  
6 informed Vaz that her file was in underwriting for review.

7 255. In or about August, 2010, Vaz received a letter from Bank of America informing her that  
8 they had received Vaz's request for assistance and personal financial information; the  
9 letter stated that Vaz needed to continue making her monthly mortgage payments.

10 256. The next day, Vaz called Bank of America in regards to the letter she had just received,  
11 and was told not to send in any money to Bank of America, as her home was in  
12 foreclosure and also being reviewed for a loan modification.

13 257. On or about August 25, 2010, Vaz attended her scheduled home loan mediation, as  
14 required under Nevada Assembly Bill 149.

15 258. At the mediation, it was noted by the mediator that the parties had resolved the matter; It  
16 was agreed between Vaz and Bank of America that Vaz would get a temporary loan  
17 modification, while Bank of America reviewed documentation.

18 259. Vaz was also told that Bank of America would be sending her final documentation,  
19 which would need to be signed and returned; Vaz never received such documentation.

20 260. Instead, in or about September 2010, Vaz received a letter from Bank of America  
21 requesting, once again, that Vaz send in the required loan modification documents; Vaz  
22 was also informed that her file was again reassigned to a different workout negotiator.

23 261. At this point, Vaz contacted both the mediator and the Bank of America representative  
24 who attended the mediation, in an attempt to find out why she hadn't received the  
25 documents she was told she would be getting; Vaz was not given an answer, she was  
26 only told to keep trying to call Bank of America.

27 262. In or about November 2010, Vaz attempted to call Bank of America representative Clay  
28



1 Carrol, who was assigned to her file, on multiple occasions; However, Vaz could not get  
2 in contact with him.

3 263. Despite not being able to get a return call from Bank of America representative Clay  
4 Carrol, Vaz received calls from other representatives requesting that she provide Bank of  
5 America with updated documentation; Again, Vaz provided Bank of America with all of  
6 the requested documentation.

7 264. In or about January 2011, Vaz was once again contacted by a Bank of America  
8 representative, who requested that Vaz provide an affidavit of hardship; Vaz immediately  
9 faxed the affidavit of hardship to Bank of America.

10 265. On or about February 16, 2011, Vaz was informed that her file was once again assigned  
11 to a new Bank of America representative, Gwendolyn Thomskin; Vaz contacted  
12 Thomskin and was informed that her file was still under review, and that Vaz should be  
13 in a "trial forbearance" soon.

14 266. On or about February 24, 2011, Vaz received a call from Bank of America representative  
15 Kip Payner, who informed Vaz that she "was at the end."

16 267. Bank of America representative Kip Payner told Vaz that she did not qualify for any loan  
17 modification programs, and that her monthly mortgage payment would be increased by  
18 \$200 each month.

19 268. Shortly after this conversation, Vaz received a letter from Bank of America simply  
20 stating that Vaz did not qualify, and that her loan is in foreclosure; No reason was given  
21 as to why Vaz did not qualify for a loan modification.

22 269. In or about March 2011, Vaz once again called Bank of America, and was told that her  
23 file was reassigned once again, this time to Bank of America representative Kevin James.

24 270. Vaz called Bank of America representative Kevin James, and was told to send in updated  
25 financials to Bank of America within 48 hours; Vaz did as directed and sent in all of the  
26 requested documentation to Bank of America immediately.

27 271. However, Vaz never received any loan modification.  
28



1 272. Vaz has been consistently told to send in documentation to Bank of America, however,  
2 when Vaz does so, she is just told that she needs to send in all of the documentation  
3 again, and again, and again.

4 273. Throughout the past few years, Vaz has been told one thing by Bank of America, only to  
5 be told another thing a few weeks later; Vaz's file has been reassigned multiple times,  
6 and each time she was informed that her file was still under review.

7 274. Despite being in the midst of negotiations with Bank of America, Bank of America has  
8 continued to proceed with the foreclosure process.

9 275. Additionally, Vaz has never received an explanation of why Bank of America says she  
10 does not qualify for a loan modification.

11 276. On or about September 14, 2006, JEFFREY WELTE (hereinafter "Welte") purchased the  
12 property located at 6561 Ashley Vale Street, Las Vegas, Nevada 89131; The loan number  
13 for this property is 146735610. Welte's loan was originally owned and/or serviced by  
14 Countrywide, but is currently owned and/or serviced by Bank of America.

15 277. In early 2008, as a result of the economic downturn, Welte began experiencing difficulty  
16 making his monthly mortgage payment; Welte contacted Countrywide in an attempt to  
17 obtain a loan modification shortly after this.

18 278. Welte was told that in order to get a loan modification, Welte would first need to miss  
19 three monthly mortgage payments; Welte stopped making his payments per  
20 Countrywide's advice.

21 279. However, Welte then contacted Countrywide and was told that in order for Welte to be  
22 considered for a loan modification, he would need to pay the same missed payments  
23 Countrywide told him not to pay.

24 280. Welte was then informed that he should look into short-selling his home; Welte sent  
25 Countrywide the offers he had received in regards to a short sale, however, Countrywide  
26 denied the offers.

27 281. Countrywide then advised Welte that the only way Welte could obtain a loan  
28

1 modification was by first filing for bankruptcy, which Welte did pursuant to  
2 Countrywide's advice.

3 282. Countrywide informed Welte that once the bankruptcy proceeding was completed,  
4 Countrywide would send Welte a modification package to fill out.

5 283. On October 6, 2008, Welte was pre-qualified over the phone for a loan modification.  
6 Welte was told that he would receive the loan modification package within a couple of  
7 weeks.

8 284. Welte did not receive any loan modification package, so he contacted the lender again on  
9 October 23, 2008. Welte was told to follow up in a few weeks.

10 285. Again, Welte did not receive any documentation, so he contacted the lender on  
11 November 3, 2008 and was told to be patient and follow up in a few weeks.

12 286. By November 19, 2008, Welte had still not received a loan modification package, so he  
13 contacted the lender and explained the situation; Welte was told to follow up in a few  
14 weeks.

15 287. On December 11, 2008, Welte again contacted the lender and stated that he had received  
16 no loan modification documents; a representative told Welte to fax documents to the  
17 lender, which Welte did while on the phone with the representative.

18 288. Welte was again told that he would receive a loan modification package within a few  
19 weeks, but instead received a Notice of Trustee's Sale.

20 289. Welte contacted the lender in regards to the Notice of Trustee's Sale and was told that  
21 they would rescind the Notice; however, the Notice of Trustee's Sale was not rescinded,  
22 it was only postponed.

23  
24 290. Welte was told that the sale would be postponed, and that in the meantime, Welte would  
25 be receiving a loan modification package.

26 291. Finally, on or about February 13, 2009, Welte received a package from the lender.

27 292. However, the modification package Welte received added approximately \$103,000.00 to  
28 the principal balance.

- 1 293. Welte received similar documentation in or about May 2009, adding approximately  
2 \$133,000.00 to the principal balance.
- 3 294. Welte was further informed in May 2009 that he would need to make three trial payments  
4 in order to be considered for a loan modification.
- 5 295. However, in July 2009, the trial payments were changed, and the amount of the payments  
6 were raised.
- 7 296. Throughout this whole process, Welte has been in negotiations with Countrywide, and  
8 subsequently Bank of America, in regards to a loan modification or short-sale; however,  
9 Bank of America has continued its foreclosure proceedings while negotiating with Welte.
- 10 297. On or about February 3, 2006, ELENA WOODARD, (hereinafter "Woodard") purchased  
11 the property located at 7528 Royal Crystal Street, Las Vegas, Nevada 89149; The loan  
12 number for this property is 124715000. Woodard's loan is currently owned and/or  
13 serviced by Bank of America.
- 14 298. As a result of the economic downturn, Woodard's income was reduced significantly,  
15 making it extremely difficult for her make her monthly mortgage payment.
- 16 299. On or about May 1, 2008, Woodard began contacting Bank of America in regards to  
17 obtaining a loan modification; Woodard was told that there was nothing they could do to  
18 help her.
- 19 300. On or about June 2, 2008, Woodard once again contacted Bank of America; This time,  
20 Bank of America requested that Woodard provide them with financial documents, which  
21 Woodard provided within a few days.
- 22 301. On or about June 16, 2008, Woodard was informed that she was currently being reviewed  
23 for a loan modification.
- 24 302. On or about August 4, 2008, Woodard called Bank of America to get the status of her  
25 loan modification; Woodard was told that there were no programs available for her, but  
26 that a new program would be established in December 2008, and she may qualify for  
27 that.
- 28

1 303. Accordingly, Woodard called once again on December 10, 2008 and was told that she  
2 needed to re-send all of the previously-requested financial documents.

3 304. On or about December 22, 2008, Woodard contacted Bank of America, who informed  
4 Woodard that they had received her documents, but that there was no program available  
5 at the moment.

6 305. On or about April 10, 2009, Woodard called Bank of America and was told that her file  
7 was being reviewed for the Attorney General's loan modification program, and that  
8 Woodard needed to send in the loan modification documents; Woodard did so  
9 immediately.

10 306. On or about April 12, 2009, Woodard contacted Bank of America and was informed that  
11 Bank of America had received her documents, and that she was definitely approved for  
12 the loan modification program.

13 307. On or about April 24, 2009, Woodard was informed by Bank of America that her file was  
14 still being reviewed.

15 308. On or about May 15, 2009, Woodard contacted Bank of America and once again was told  
16 that her file was still being reviewed.

17 309. On or about June 18, 2009, Woodard was once again told by Bank of America that her  
18 file was still in review, but that Woodard would need to provide Bank of America with  
19 the loan modification documents again; Woodard provided Bank of America with the  
20 requested loan modification documents on or about June 19, 2009.

21 310. On or about June 23, 2009, Woodard contacted Bank of America representative Ingrid  
22 and was told that Bank of America could not find her documents; Woodard re-sent the  
23 documentation.

24 311. On or about June 25, 2009, Woodard called Bank of America to determine if they had  
25 received the documents; Bank of America stated they had received everything they  
26 needed.

27 312. On or about August 4, 2009, Woodard spoke with Bank of America representative  
28

1 Gloria, who informed Woodard that her file was closed as a result of Woodard apparently  
2 rejecting an offered loan modification; Woodard had never received a loan modification  
3 offer.

4 313. Woodard called Bank of America again on or about August 7, 2009; Bank of America  
5 representative Jim advised Woodard that her file was going to be reviewed again, but that  
6 she needed to provide all of the previously-requested documentation once again.

7 314. Woodard provided all of the requested documentation to Bank of America shortly  
8 thereafter; On or about August 11, 2009, Woodard was informed that Bank of America  
9 had received all of the requested documentation.

10 315. However, Woodard called Bank of America once again on or about August 14, 2009 to  
11 verify that her file was being reviewed and was told by Bank of America representative  
12 Arthur that Woodard would need to re-send the documentation.

13 316. On or about August 20, 2009, Woodard was told by Bank of America representative  
14 Janine that they were not honoring any agreement made with the Attorney General's  
15 Office in regards to any loan modification program, and that in fact, no such program  
16 existed.

17 317. On or about September 9, 2009, Woodard was notified that her file was assigned to a new  
18 negotiator, Bank of America representative Christopher Maser.

19 318. On or about September 11, 2009, Woodard received a Notice of Default and Election to  
20 Sell.

21 319. Woodard immediately called Bank of America and inquired as to why she received a  
22 Notice of Default when she was supposed to be being reviewed for a loan modification;  
23 Bank of America informed Woodard that there was no program for Woodard, but that  
24 they were still looking for a possible loan modification.

25 320. On or about September 22, 2009, Woodard contacted Bank of America once again, and  
26 was told that there was no program available for her and that her only option at this point  
27 was a full reinstatement.  
28

- 1 321. On or about October 2, 2009, Woodard applied for a Foreclosure Mediation, which was  
2 established by Nevada Assembly Bill 149.
- 3 322. On or about May 4, 2010, Woodard attended the mediation, however, no final resolution  
4 was reached; The parties did however, agree to exchange additional documentationadn  
5 continue the mediation at a later date.
- 6 323. Despite being in the middle of negotiations with Bank of America in regards to obtaining  
7 a loan modification, Bank of America proceeded with the foreclosure process.
- 8 324. Additionally, Woodard was given conflicting information on numerous occasions from  
9 Bank of America representatives in regards to the status of her file, documents being  
10 recieved/not recieved, etc.
- 11 325. On or about January24, 2007, ROSS WOODARD, purchased the property located at  
12 9700 Dieterich Avenue, Las Vegas, Nevada 89148; The loan number for this property is  
13 022258557. Ross Woodard's loan is currently owned and/or serviced by Bank of  
14 America.
- 15 326. As a result of the economic downturn, Ross Woodard began having problems keeping up  
16 with his monthly mortgage payment.
- 17 327. After spending approximately two years attempting to locate who owns/services his loan,  
18 Ross Woodard finally discovered that Bank of America owned and/or serviced his loan.
- 19 328. Toward the end of 2009 and beginning of 2010, Ross Woodard began contacting Bank of  
20 America in regards to obtaining a loan modification; Bank of America requested that  
21 Ross Woodard provide them with loan modification and financial documents.
- 22 329. On or about March 25, 2011, Ross Woodard provided all of the requested documents to  
23 Bank of America.
- 24 330. On or about April 7, 2011, Bank of America again requested documentation from Ross  
25 Woodard in regards to reviewing his file for a loan modification; This documentation  
26 was sent to Bank of America the same day.
- 27 331. Despite being in the midst of negotiations with Bank of America regarding obtaining a  
28

1 loan modification, Bank of America has proceeded with the foreclosure process.

2 332. On or about July 18, 2005, TERESA YAMOMO, (hereinafter "Yamomo") purchased the  
3 property located at 6045 Marigold Point Court, Las Vegas, Nevada 89120; The loan  
4 number for this property is 109538587. Yamomo's loan is currently owned and/or  
5 serviced by Bank of America.

6 333. As a result of the economic downturn, and Yamomo's monthly mortgage payment  
7 doubling, Yamomo began having difficulty keeping up with her monthly payments.

8 334. Yamomo began contacting Bank of America to discuss a loan modification in or about  
9 April 2009.

10 335. Yamomo was told by Bank of America to send the required loan modification  
11 documentation to them, and they would review her file.

12 336. On or about November 1, 2010, while in the middle of negotiating with Bank of America  
13 regarding a loan modification, Yamomo received a Notice of Default and Election to  
14 Sell.

15 337. In or about February 2011, Yamomo participated in the state-sponsored mediation  
16 program with Bank of America, however, no agreement was reached.

17 338. Yamomo was notified that her home was to be sold at a Trustee's Sale on April 11, 2011,  
18 however after sending the loan modification documents once again, this date was  
19 postponed to May 11, 2011.

20 339. Despite Yamomo being in negotiations with Bank of America regarding a loan  
21 modification, Bank of America has continued the foreclosure process and set a sale date.  
22

23 **BANK OF AMERICA REPEATEDLY MISREPRESENTED THE TIME FOR MAKING**  
24 **DECISIONS ON CONSUMERS' MODIFICATIONS**

25 340. On its website and in its interactions with Plaintiffs, Bank of America repeatedly  
26 promised consumers answers on their modification requests within a specific time frame,  
27 typically 30 or 60 days. Many consumers have waited 6 months or even a year and still  
28 have not received decisions.

341. Bank of America's website indicates that it will "typically" take 30 to 45 calendar days



1 from the receipt of a consumer's documents to make a decision on a loan modification  
2 request. In addition, Bank of America promises on its website that: "You can expect to  
3 hear back from us within 10 business days from when we receive al your required  
4 documents. The purpose of contacting you is to confirm receipt of your information, as  
5 well as let you know how the evaluation process works and how long it takes. **See,**  
6 **Exhibit "2"**.

7 342. Bank of America sent consumers seeking modifications a document with "Frequently  
8 Asked Questions" about HAMP. One question asks how long it will take for Bank of  
9 America to process consumers' modification request. The answer: "up to 45 days." **See,**  
10 **Exhibit "3"**.

11 343. These assurances are reinforced in one-on-one conversations between Nevada consumers  
12 and Bank of America representatives in which Bank of America promises that consumers  
13 will have an answer on their requests within 30, 60, or 90 days.

14 344. Bank of America has kept Nevada consumers waiting for 6 months, one year, or longer  
15 for a decision. These consumers have suffered delay, anxiety, and often foreclosure while  
16 trying to secure an affordable payment that allows them to meet their obligations and  
17 keep their homes.

18 345. One critical source of delay is Bank of America's routine loss of consumer documents.  
19 For some time, HAMP required Bank of America to obtain updated financial information  
20 from consumers if the information was more than 90 days old. **See, Exhibit "4"**. As a  
21 result, Bank of America's delayed processing of consumers' modifications required them  
22 to obtain additional documentation from consumers, which further delayed the  
23 processing of their requests and compounded the logistical demands on the Bank. Even  
24 beyond this mandated update, Bank of America consistently has lost consumers'  
25 documents; causing delays while consumers re-sent - sometimes more than half a dozen  
26 times - the same documents. Bank of America has publicly acknowledged  
27 "shortcomings" in its document maintenance. **See, Exhibit "5"**. Also upon information  
28



1 and belief, consumers were denied modifications because of "missing" paperwork that  
2 Bank of America had received.

3 346. Bank of America routinely fails to notify consumers of missing documents. In fact, most  
4 consumers found out that their documents were missing or incomplete months after they  
5 submitted their modification requests, and only upon calling Bank of America. In many  
6 instances, Bank of America told consumers that documents were missing after previously  
7 assuring them, often repeatedly, that their files were complete and under review.

8 347. While waiting for answers, consumers call Bank of America regularly to check on the  
9 status of their modifications requests. They are promised calls or letters with updates,  
10 which almost never come. Instead, many receive multiple foreclosure-related  
11 communications, including collection calls. This long waiting period is not only  
12 inconsistent with Bank of America's oral and written commitments to consumers, but  
13 extremely trying for homeowners who do not know from day to day whether they will  
14 get help or lose their homes.

15 348. Bank of America knew, or should have known, that its statements were false because  
16 employees were aware that consumers often suffer wait times of more than three months  
17 while waiting for action on their modification requests.

18  
19 **BANK OF AMERICA ASSURED CONSUMERS THAT IT WOULD NOT FORECLOSE**  
20 **WHILE THEIR MODIFICATIONS WERE PENDING, BUT SOLD THEIR HOMES**  
21 **ANYWAY**

22 349. As noted above, consumers waiting for decisions on their modifications often receive  
23 foreclosure-related notices. Upon receiving these communications, many consumers call  
24 the number provided by Bank of America on the notices to find out what they mean.  
25 Bank of America has repeatedly and deceptively assured Nevada consumers that they  
26 should not worry, their modifications are still in review, and their homes will not be sold  
27 while their modification requests were pending.

28 350. This promise is reinforced by commitments on Bank of America's website. Under  
"Frequently Asked Questions," Bank of America represents to homeowners that their

homes will not be sold while they are awaiting decisions on their modification requests or on modification plans:

I want to try to get a home loan modification under the Making Home Affordable program, but I'm afraid that my lender will go ahead with the foreclosure while I'm trying to make it happen. Can I get more time to explore this option?

Yes. While we review your eligibility for the program, your loan will not go to foreclosure sale. When you enter a trial plan under the program, your loan will not be referred to foreclosure, and any pending foreclosure proceeding will not go to sale. **See, Exhibits "6-8"**.

351. Despite these assurances, Bank of America has pursued and completed foreclosures while homeowners were awaiting decisions upon loan modifications or on trial modification plans. In other cases, homeowners incurred foreclosure fees, even though the foreclosure process should never have started or proceeded.

352. Bank of America knew, or should have known, that its statements were false and misleading. Its employees regularly encountered consumers whose homes were wrongfully foreclosed while their modifications were still under review. As noted above, interviews with former Bank of America call center employees indicate that foreclosures were continuing while consumers were awaiting decisions on their modifications.

**BANK OF AMERICA TOLD CONSUMERS THAT THEY MUST BE BEHIND ON THEIR MORTGAGES TO QUALIFY FOR MODIFICATIONS, THOUGH DELINQUENCY IS NOT REQUIRED**

353. Bank of America represents publicly, and federal rules require, that consumers need not be delinquent to be eligible for a modification.

354. Bank of America's website notes: "If you've suffered a hardship that is affecting your ability to make your mortgage payments or have already missed a payment, you may be

able to receive a more affordable mortgage payment under the Home Affordable Modification Program." **See, Exhibits "9-10"**.

355. Yet Bank of America representatives frequently advised consumers that they must miss payments in order to be considered for loan modifications. Upon information and belief, many consumers received a letter advising that one of the guidelines under the HAMP program requires the loan be 60 days delinquent. This letter - likely a form document -

1 was inaccurate and deceptive; HAMP never required a loan to be delinquent in order to  
2 be eligible for a modification.

3 356. These misrepresentations regarding the requirements of HAMP violate the Nevada  
4 Deceptive Trade Practices Act.

5 **BANK OF AMERICA MISREPRESENTED TO CONSUMERS THAT THEIR TRIAL**  
6 **MODIFICATIONS WOULD BE CONVERTED TO PERMANENT MODIFICATIONS IF**  
7 **THEY MADE THEIR TRIAL PAYMENTS**

8 357. HAMP sets up a two tier framework. Borrowers first must qualify for an initial, three-  
9 month trial modification. Consumers who make each of the three payments on time will  
10 receive permanent modifications.

11 358. Bank of America has made unequivocal promises that consumers who successfully  
12 complete trial plans would receive permanent modifications. For example, its website  
13 announced:

14 a. "If you successfully make all your Trial Period Plan payments, you will receive a  
15 Modification Agreement defining the changes. After this document has been  
16 signed, notarized and returned to us, your modification will be officially made  
17 permanent." **See, Exhibits "11-12"**.

18 b. "If you successfully make your Trial Period Plan payments during the trial period,  
19 you will be approved for a permanent modification of your loan." **See, Exhibit**  
20 **"13"**.

21 359. In addition, Bank of America led consumers to believe that it would convert them to  
22 permanent modifications after three or four months on a trial period. Consumers received  
23 three payment coupons with their modification agreement, and report being confused  
24 about what to do when they reach the fourth month but have not heard from Bank of  
25 America. Some consumers called the Bank and were told at that time, or were told at the  
26 time the trial modification was offered, that they will receive a permanent modification  
27 within a month of completing their trial periods.

28 360. Bank of America's website again confirms its oral representations: "Your trial period

- 1 will last 3 or 4 months, depending on your circumstances.” See, **Exhibit "14"**. Bank of  
 2 America certainly did not advise consumers that they would wait six months or more.
- 3 361. Bank of America’s trial modification offer assures consumers, “[i]f you make all of your  
 4 trial period plan payments ... and return any additional documents that may be required,  
 5 you may receive a Modification Agreement.”
- 6 362. Bank of America knew, or should have known, that its promise that consumers who  
 7 made their trial payments would be converted to permanent modifications was deceptive  
 8 as it knew the significant number of consumers with trial modifications that were never  
 9 made permanent. Bank of America also tracked the “age” of trial periods, and knew that  
 10 many consumers waited more than four (or even six) months for their modifications to be  
 11 made permanent (or declined).
- 12 363. Though consumers benefit from temporarily lower payments during their trial  
 13 modification, consumers who are not converted to a permanent modification may end up  
 14 worse off. In his October 2010 report, the Inspector General of the Troubled Assets  
 15 Relief Program, which oversees HAMP, discussed the fate of borrowers in failed trial  
 16 modifications who “even in circumstances where they never missed a payment, ... may  
 17 face back payments, penalties, and even late fees that suddenly become due on their  
 18 ‘modified’ mortgages and that they are unable to pay, thus resulting in the very loss of  
 19 their homes that HAMP is meant to prevent.”

20  
 21 **BANK OF AMERICA MISREPRESENTED THE BASIS FOR DENYING CONSUMERS’  
 22 MODIFICATIONS**

- 23 364. Bank of America told consumers, by letter and often by phone, the reasons that their  
 24 requests for modifications were denied. Among the commonly cited reasons for denying  
 25 Nevada consumers’ applications were:
- 26 a. Investor denial: the owner of the loan with authority to approve the modification  
 27 would not permit the modification;
  - 28 b. Inability to reach the consumer or to obtain missing documents needed to review  
 the request;

- c. Previous modification;
- d. Consumer's income insufficient to support the modified payment;
- e. Failure to make trial payments or to accept previous modification; and
- f. Current on mortgage payments.

365. Upon information and belief, in many cases, the reasons offered by Bank of America for denying modifications were inaccurate and misleading. In some cases, Bank of America claimed that it was missing documents, even though consumers had repeatedly sent in their documents and/or were told by Bank of America that their files were complete and being reviewed for modifications.

366. As noted above, Bank of America's authority to offer modifications is defined by the Pooling and Servicing Agreement ("PSA") that governs the servicing of specific pools of loans. In some instances, the investor or owner of the loans delegates to Bank of America full authority to make modification decisions consistent with the investor's best interest. Under some PSAs, only certain types of loans can be modified or certain types of modifications made. Other investors do not permit modifications or require Bank of America to seek approval before offering modifications.

367. Upon information and belief, Bank of America notified consumers that their modifications were declined by the investors in instances where Bank of America had full authority, without the investors' approval, to offer modifications.

368. In some instances, Bank of America turned away consumers on the grounds that the consumer had failed to make payments during the trial modification when, in fact, the consumers had made all of the trial payments. These denials directly contradict Bank of America's repeated promises on its website that consumers who make their trial plan payments will receive permanent modifications.

**BANK OF AMERICA MISLED CONSUMERS BY INDICATING THAT THEY HAD  
BEEN APPROVED FOR MODIFICATION AND BY OFFERING CONSUMERS  
MODIFICATIONS ON DIFFERENT TERMS THAN PROMISED**

369. For consumers who were able to secure modification commitments, Bank of America

misrepresented whether and on what terms their modification requests had been approved.

370. Bank of America told consumers that their modifications had been approved, but then notified them that they had never received modifications. Often, this news came only after consumers had made several payments on trial modifications.

371. Nev. Rev. Stat. § 107.086, passed by the Nevada Legislature on May 22, 2009, allows homeowners who receive Notices of Default to participate in a pre-foreclosure mediation with their servicers. If a homeowner sends in the required election form, the servicer must appear at an assigned mediation date with all required documents and the authority to negotiate an appropriate agreement with the borrower. Participation in good faith in the mediation is prerequisite to moving forward with the foreclosure.

372. Often, Bank of America representatives did not show up at assigned mediation dates, or did not have the documents or negotiating authority required by law. As a result, in a number of instances, mediators issued findings that Bank of America had acted in bad faith.

373. In addition, a number of consumers were promised modifications on a set of terms worked out with (and witnessed by) the mediators, but were eventually given a modification on completely different terms.

374. Bank of America's promises of modifications, which it failed to provide, constitutes a deceptive practice.

### **FIRST CAUSE OF ACTION** ***Violations of Nevada Deceptive Trade Practices***

375. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint and further alleges as follows:

376. Bank of America's misrepresentations to Plaintiffs, and in fact, Nevada consumers as a whole, regarding the operation of its mortgage modification practice violates the Nevada Deceptive Practices Act.

377. In particular Bank of America's deceptive conduct breached its obligations under:

- a. Nev. Rev. Stat. § 598.0915(9), which provides that it is a deceptive practice for a person to “[a]dvertise[] goods or services with the intent not to sell or lease them as advertised;”
- b. Nev. Rev. Stat. § 598.0915(15), making it a deceptive trade practice for a person to “[k]nowingly make[] any other false representation in a transaction;”
- c. Nev. Rev. Stat. § 598.092(8), which declares that it is a deceptive trade practice for a person to “[k]nowingly misrepresent[] the legal rights, obligations, or remedies of a party to a transaction;” and
- d. Nev. Rev. Stat. § 598.0973, allowing a court to impose heightened penalties for “engage[ing] in a deceptive trade practice directed toward an elderly person or a person with a disability.”

378. As alleged herein, Bank of America engaged in unlawful practices in violation of the Nevada Deceptive Trade Practices Act §§ 598, *et seq.*, in that it made false promises and used deception, deceptive practices, and/or misrepresentations in connection with mortgage modifications.

379. That as a result of Defendant’s actions, Plaintiffs have been damaged in excess of \$10,000.00.

380. In all matters alleged herein, the Defendants acted willfully in violation of Nev. Rev. Stat. §§ 598, *et seq.*, as required by Nev. Rev. Stat. § 598.0999(2).

381. As such, Plaintiffs are entitled to recover punitive damages in an amount to be determined at trial.

382. The Plaintiffs have been required to retain the services of Callister + Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable attorney’s fees and costs of court for having to bring this action.

**SECOND CAUSE OF ACTION**  
***(Injunctive Relief)***

383. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint and further alleges as follows:



1 384. Plaintiffs' properties face foreclosure as a result of Defendants violation of the Nevada  
2 Deceptive Trade Practices Act.

3 385. A Court Order is necessary to prevent the foreclosure of Plaintiffs' property and/or  
4 eviction proceedings or otherwise altering the nature and state of Plaintiffs' status quo of  
5 their residences.

6 386. Federal Home Loan Mortgage Corporation is a necessary and indispensable party  
7 because they unfortunately purchased Nguyen's property which was wrongfully  
8 foreclosed upon by Bank of America.

9 387. The Plaintiffs have been required to retain the services of Callister + Associates to  
10 prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable  
11 attorney's fees and costs of court for having to bring this action.

12 **THIRD CAUSE OF ACTION**  
13 ***(Promissory Estoppel)***

14 388. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
15 and further alleges as follows:

16 389. Defendants promised in writing and verbally that Defendants would not proceed with the  
17 foreclosure process while Plaintiffs were in negotiations with Defendants in regards to a  
18 loan modification.

19 390. Defendants should have reasonably expected that Plaintiffs would rely upon Defendants'  
20 promises.

21 391. Plaintiffs, in good faith, detrimentally relied on Defendants' promises by forgoing other  
22 options and remedies in regards to their mortgage.

23 392. Defendants were aware of Plaintiffs above described acts of detriment.

24 393. Plaintiffs were justifiable in their reliance on Defendants' promises.

25 394. Injustice can only be avoided by enforcement of the promise.

26 395. The Plaintiffs have been required to retain the services of Callister + Associates to  
27 prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable  
28 attorney's fees and costs of court for having to bring this action.




1       **WHEREFORE**, Plaintiffs pray for relief and damages as follows:

- 2       1.     For a Declaratory Judgment that the Defendant's operation of its loan modification  
3             program has violated the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598,  
4             *et seq.*;
- 5       2.     That Plaintiffs be awarded actual damages in excess of \$10,000.00;
- 6       3.     That Plaintiffs be awarded punitive damages in excess of \$10,000.00;
- 7       4.     That Plaintiffs be awarded reasonable attorney's fees;
- 8       5.     That Plaintiffs be awarded their costs of Court;
- 9       6.     That injunctive relief be awarded, enjoining Defendants from foreclosure, recording of  
10            the deed of trust and/or eviction proceedings against Plaintiffs; and
- 11       7.     That Plaintiffs be awarded any other relief as the Court may deem proper.

12       DATED: This 29<sup>th</sup> day of April, 2011.

13  
14                               Respectfully submitted,

15                               **CALLISTER + ASSOCIATES, LLC**

16  
17                               By:  #11920 For:  
18                               **MATTHEW Q. CALLISTER, ESQ.**  
19                               Nevada Bar No. 001396  
20                               823 Las Vegas Blvd. South, 5<sup>th</sup> Floor  
21                               Las Vegas, NV 89101  
22                               Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

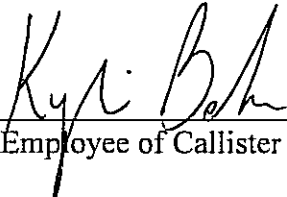
I HEREBY CERTIFY that I am an employee of the Law Firm of Callister + Associates, LLC, and not a party to nor interested in the within matter; that on the 29 day of April, 2011, service of the **FIRST AMENDED CLASS ACTION COMPLAINT** was made by:

☒ XX by serving the following parties electronically through CM/ECF as set forth below;

☐ by faxing a copy to the numbers below;

☐ or by depositing a copy in the United States Mail postage prepaid to the parties listed below:

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\_\_\_\_\_  
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